

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY MARCH 28, 2008

AMENDED IN ASSEMBLY MARCH 10, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2487

Introduced by Assembly Member Berg
(Coauthors: Assembly Members Arambula, Eng, and Jeffries)

February 21, 2008

An act to amend, repeal, and add Section 1708.6 of the Civil Code, and to amend, repeal, and add Section 19280 of the Revenue and Taxation Code, relating to domestic violence, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as amended, Berg. Domestic violence: restitution: collection.

(1) Existing law provides that a person who commits the tort of domestic violence, as specified, is liable for damages, including, but not limited to, general, special, and punitive damages. The court is authorized to grant to a prevailing plaintiff equitable relief, an injunction, costs, and any other relief that the court deems proper, including reasonable attorney's fees.

This bill would provide that, *beginning January 1, 2010*, until January 1, 2016, any final judgment awarding damages, costs, or fees under these provisions may be referred by the court to the Franchise Tax Board for collection, as specified.

(2) Existing law authorizes the superior court, the county, or the state to refer to the Franchise Tax Board for collection delinquent fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than \$100, in the aggregate, for criminal offenses, as specified. Existing law provides that restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, if specified conditions are met, including that the government entity has the authority to collect on behalf of the state or the victim.

This bill would provide that, until January 1, 2016, final judgments awarded to victims of domestic violence that are referred by the court for collection *on or after January 1, 2010*, under the provisions described in (1) above, may be treated as restitution orders for purposes of referring the final judgment to the Franchise Tax Board for collection. *The bill would create the Domestic Violence Tort Claims Collection Fund for the deposit and distribution of final judgment moneys collected pursuant to those provisions. The bill would also authorize an amount not to exceed 10% of the amount collected to be subtracted from the amount deposited in the fund to reimburse the Franchise Tax Board for costs incurred to modify systems to implement the collection of those final judgments.*

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1708.6 of the Civil Code is amended to
- 2 read:
- 3 1708.6. (a) A person is liable for the tort of domestic violence
- 4 if the plaintiff proves both of the following elements:
- 5 (1) The infliction of injury upon the plaintiff resulting from
- 6 abuse, as defined in subdivision (a) of Section 13700 of the Penal
- 7 Code.
- 8 (2) The abuse was committed by the defendant, a person having
- 9 a relationship with the plaintiff as defined in subdivision (b) of
- 10 Section 13700 of the Penal Code.
- 11 (b) A person who commits an act of domestic violence upon
- 12 another is liable to that person for damages, including, but not

1 limited to, general damages, special damages, and punitive
2 damages pursuant to Section 3294.

3 (c) The court, in an action pursuant to this section, may grant
4 to a prevailing plaintiff equitable relief, an injunction, costs, and
5 any other relief that the court deems proper, including reasonable
6 attorney's fees.

7 (d) The rights and remedies provided in this section are in
8 addition to any other rights and remedies provided by law.

9 (e) The time for commencement of an action under this section
10 is governed by Section 340.15 of the Code of Civil Procedure.

11 (f) ~~Any~~ *Beginning January 1, 2010, any* final judgment awarding
12 damages, costs, or fees under this section may be referred by the
13 court to the Franchise Tax Board for collection pursuant to Article
14 5.5 (commencing with Section 19280) of Chapter 5 of Part 10.2
15 of Division 2 of the Revenue and Taxation Code at the time the
16 judgment is entered or upon petition by the plaintiff.

17 (g) This section shall remain in effect only until January 1, 2016,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2016, deletes or extends that date.

20 SEC. 2. Section 1708.6 is added to the Civil Code, to read:

21 1708.6. (a) A person is liable for the tort of domestic violence
22 if the plaintiff proves both of the following elements:

23 (1) The infliction of injury upon the plaintiff resulting from
24 abuse, as defined in subdivision (a) of Section 13700 of the Penal
25 Code.

26 (2) The abuse was committed by the defendant, a person having
27 a relationship with the plaintiff as defined in subdivision (b) of
28 Section 13700 of the Penal Code.

29 (b) A person who commits an act of domestic violence upon
30 another is liable to that person for damages, including, but not
31 limited to, general damages, special damages, and punitive
32 damages pursuant to Section 3294.

33 (c) The court, in an action pursuant to this section, may grant
34 to a prevailing plaintiff equitable relief, an injunction, costs, and
35 any other relief that the court deems proper, including reasonable
36 attorney's fees.

37 (d) The rights and remedies provided in this section are in
38 addition to any other rights and remedies provided by law.

39 (e) The time for commencement of an action under this section
40 is governed by Section 340.15 of the Code of Civil Procedure.

1 (f) This section shall become operative on January 1, 2016.

2 SEC. 3. Section 19280 of the Revenue and Taxation Code is
3 amended to read:

4 19280. (a) (1) Fines, state or local penalties, forfeitures,
5 restitution fines, restitution orders, or any other amounts imposed
6 by a superior court of the State of California upon a person or any
7 other entity that are due and payable in an amount totaling no less
8 than one hundred dollars (\$100), in the aggregate, for criminal
9 offenses, including all offenses involving a violation of the Vehicle
10 Code, may, no sooner than 90 days after payment of that amount
11 becomes delinquent, be referred by the superior court, the county,
12 or the state to the Franchise Tax Board for collection under
13 guidelines prescribed by the Franchise Tax Board.

14 (2) For purposes of this subdivision:

15 (A) The amounts referred by the superior court, the county, or
16 state under this section may include any amounts that a government
17 entity may add to the court-imposed obligation as a result of the
18 underlying offense, trial, or conviction. For purposes of this article,
19 those amounts shall be deemed to be imposed by the court.

20 (B) Restitution orders may be referred to the Franchise Tax
21 Board only by a government entity, as agreed upon by the
22 Franchise Tax Board, provided that all of the following apply:

23 (i) The government entity has the authority to collect on behalf
24 of the state or the victim.

25 (ii) The government entity shall be responsible for distributing
26 the restitution order collections, as appropriate.

27 (iii) The government entity shall ensure, in making the referrals
28 and distributions, that it coordinates with any other related
29 collection activities that may occur by superior courts, counties,
30 or other state agencies.

31 (iv) The government entity shall ensure compliance with laws
32 relating to the reimbursement of the State Restitution Fund.

33 (C) The Franchise Tax Board shall establish criteria for referral,
34 which shall include setting forth a minimum dollar amount subject
35 to referral and collection.

36 ~~(D) Final judgments awarded to victims of domestic violence~~
37 ~~under Section 1708.6 of the Civil Code that are referred by the~~
38 ~~court for collection may be treated as restitution orders under~~
39 ~~subparagraph (B).~~

1 (b) The Franchise Tax Board, in conjunction with the Judicial
2 Council, shall seek whatever additional resources are needed to
3 accept referrals from all 58 counties or superior courts.

4 (c) Upon written notice to the debtor from the Franchise Tax
5 Board, any amount referred to the Franchise Tax Board under
6 subdivision (a) and any interest thereon, including any interest on
7 the amount referred under subdivision (a) that accrued prior to the
8 date of referral, shall be treated as final and due and payable to the
9 State of California, and shall be collected from the debtor by the
10 Franchise Tax Board in any manner authorized under the law for
11 collection of a delinquent personal income tax liability, including,
12 but not limited to, issuance of an order and levy under Article 4
13 (commencing with Section 706.070) of Chapter 5 of Division 2
14 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
15 provided for earnings withholding orders for taxes.

16 (d) (1) Part 10 (commencing with Section 17001), this part,
17 Part 10.7 (commencing with Section 21001), and Part 11
18 (commencing with Section 23001) shall apply to amounts referred
19 under this article in the same manner and with the same force and
20 effect and to the full extent as if the language of those laws had
21 been incorporated in full into this article, except to the extent that
22 any provision is either inconsistent with this article or is not
23 relevant to this article.

24 (2) Any information, information sources, or enforcement
25 remedies and capabilities available to the court or the state referring
26 to the amount due described in subdivision (a), shall be available
27 to the Franchise Tax Board to be used in conjunction with, or
28 independent of, the information, information sources, or remedies
29 and capabilities available to the Franchise Tax Board for purposes
30 of administering Part 10 (commencing with Section 17001), this
31 part, Part 10.7 (commencing with Section 21001), or Part 11
32 (commencing with Section 23001).

33 (e) The activities required to implement and administer this part
34 shall not interfere with the primary mission of the Franchise Tax
35 Board to administer Part 10 (commencing with Section 17001)
36 and Part 11 (commencing with Section 23001).

37 (f) For amounts referred for collection under subdivision (a),
38 interest shall accrue at the greater of the rate applicable to the
39 amount due being collected or the rate provided under Section
40 19521. When notice of the amount due includes interest and is

1 mailed to the debtor and the amount is paid within 15 days after
2 the date of notice, interest shall not be imposed for the period after
3 the date of notice.

4 (g) In no event shall a collection under this article be construed
5 as a payment of income taxes imposed under Part 10 (commencing
6 with Section 17001) or Part 11 (commencing with Section 23001).

7 (h) (1) *Final judgments awarded to victims of domestic violence*
8 *under Section 1708.6 of the Civil Code that are referred by the*
9 *court for collection may be collected in the same manner as*
10 *restitution orders, except as provided in this subdivision.*

11 (2) (A) *There is hereby created the Domestic Violence Tort*
12 *Claims Collection Fund for the deposit and distribution of final*
13 *judgment moneys collected pursuant to Section 1708.6 of the Civil*
14 *Code. Notwithstanding Section 13340 of the Government Code,*
15 *the fund is continuously appropriated for distribution to satisfy*
16 *final judgments under Section 1708.6 of the Civil Code, and as*
17 *otherwise authorized by this subdivision. The fund shall be*
18 *administered by the Franchise Tax Board.*

19 (B) *Until the determination described in subparagraph (C), an*
20 *amount not to exceed 10 percent of the amount collected with*
21 *respect to a final judgment under Section 1708.6 of the Civil Code*
22 *shall be subtracted from the amount deposited in the Domestic*
23 *Violence Tort Claims Collection Fund to reimburse the Franchise*
24 *Tax Board for costs incurred to modify systems to implement the*
25 *collection of final judgments under Section 1708.6 of the Civil*
26 *Code, as authorized by provisions of the act adding this paragraph.*
27 *The recovery of system modification costs authorized by this*
28 *paragraph is in addition to the reimbursement of the actual costs*
29 *of collection incurred by the Franchise Tax Board authorized by*
30 *Section 19282.*

31 (C) *When the Controller determines that the General Fund has*
32 *been fully reimbursed for the funds expended to cover the costs*
33 *incurred by the Franchise Tax Board to modify systems to*
34 *implement the collection of final judgments under Section 1708.6*
35 *of the Civil Code in accordance with paragraph (1) of this*
36 *subdivision, the subtraction prescribed in subparagraph (B) shall*
37 *cease.*

38 (3) *If a final judgment under Section 1708.6 of the Civil Code*
39 *and other amounts imposed by a superior court described in*
40 *subdivision (a) are referred to the Franchise Tax Board for*

1 *collection from the same person, the Franchise Tax Board shall*
2 *stay collection action on the final judgment under Section 1708.6*
3 *of the Civil Code until other amounts imposed by a superior court*
4 *have been fully satisfied.*

5 ~~(h)~~

6 (i) This section shall remain in effect only until January 1, 2016,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2016, deletes or extends that date.

9 SEC. 4. Section 19280 is added to the Revenue and Taxation
10 Code, to read:

11 19280. (a) (1) Fines, state or local penalties, forfeitures,
12 restitution fines, restitution orders, or any other amounts imposed
13 by a superior court of the State of California upon a person or any
14 other entity that are due and payable in an amount totaling no less
15 than one hundred dollars (\$100), in the aggregate, for criminal
16 offenses, including all offenses involving a violation of the Vehicle
17 Code, may, no sooner than 90 days after payment of that amount
18 becomes delinquent, be referred by the superior court, the county,
19 or the state to the Franchise Tax Board for collection under
20 guidelines prescribed by the Franchise Tax Board.

21 (2) For purposes of this subdivision:

22 (A) The amounts referred by the superior court, the county, or
23 state under this section may include any amounts that a government
24 entity may add to the court-imposed obligation as a result of the
25 underlying offense, trial, or conviction. For purposes of this article,
26 those amounts shall be deemed to be imposed by the court.

27 (B) Restitution orders may be referred to the Franchise Tax
28 Board only by a government entity, as agreed upon by the
29 Franchise Tax Board, provided that all of the following apply:

30 (i) The government entity has the authority to collect on behalf
31 of the state or the victim.

32 (ii) The government entity shall be responsible for distributing
33 the restitution order collections, as appropriate.

34 (iii) The government entity shall ensure, in making the referrals
35 and distributions, that it coordinates with any other related
36 collection activities that may occur by superior courts, counties,
37 or other state agencies.

38 (iv) The government entity shall ensure compliance with laws
39 relating to the reimbursement of the State Restitution Fund.

1 (C) The Franchise Tax Board shall establish criteria for referral,
2 which shall include setting forth a minimum dollar amount subject
3 to referral and collection.

4 (b) The Franchise Tax Board, in conjunction with the Judicial
5 Council, shall seek whatever additional resources are needed to
6 accept referrals from all 58 counties or superior courts.

7 (c) Upon written notice to the debtor from the Franchise Tax
8 Board, any amount referred to the Franchise Tax Board under
9 subdivision (a) and any interest thereon, including any interest on
10 the amount referred under subdivision (a) that accrued prior to the
11 date of referral, shall be treated as final and due and payable to the
12 State of California, and shall be collected from the debtor by the
13 Franchise Tax Board in any manner authorized under the law for
14 collection of a delinquent personal income tax liability, including,
15 but not limited to, issuance of an order and levy under Article 4
16 (commencing with Section 706.070) of Chapter 5 of Division 2
17 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
18 provided for earnings withholding orders for taxes.

19 (d) (1) Part 10 (commencing with Section 17001), this part,
20 Part 10.7 (commencing with Section 21001), and Part 11
21 (commencing with Section 23001) shall apply to amounts referred
22 under this article in the same manner and with the same force and
23 effect and to the full extent as if the language of those laws had
24 been incorporated in full into this article, except to the extent that
25 any provision is either inconsistent with this article or is not
26 relevant to this article.

27 (2) Any information, information sources, or enforcement
28 remedies and capabilities available to the court or the state referring
29 to the amount due described in subdivision (a), shall be available
30 to the Franchise Tax Board to be used in conjunction with, or
31 independent of, the information, information sources, or remedies
32 and capabilities available to the Franchise Tax Board for purposes
33 of administering Part 10 (commencing with Section 17001), this
34 part, Part 10.7 (commencing with Section 21001), or Part 11
35 (commencing with Section 23001).

36 (e) The activities required to implement and administer this part
37 shall not interfere with the primary mission of the Franchise Tax
38 Board to administer Part 10 (commencing with Section 17001)
39 and Part 11 (commencing with Section 23001).

1 (f) For amounts referred for collection under subdivision (a),
2 interest shall accrue at the greater of the rate applicable to the
3 amount due being collected or the rate provided under Section
4 19521. When notice of the amount due includes interest and is
5 mailed to the debtor and the amount is paid within 15 days after
6 the date of notice, interest shall not be imposed for the period after
7 the date of notice.

8 (g) In no event shall a collection under this article be construed
9 as a payment of income taxes imposed under Part 10 (commencing
10 with Section 17001) or Part 11 (commencing with Section 23001).

11 (h) This section shall become operative on January 1, 2016.

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